



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 00952-00
17 April 2000

SSG [REDACTED] USMC
[REDACTED]

Dear Staff S [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of a fitness report for 28 January to 8 May 1998.

It is noted that the Commandant of the Marine Corps (CMC) has amended the contested fitness report by removing all reference to any past alcohol rehabilitation.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 3 February 2000, a copy of which is attached, and your letter of 20 March 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. If you are correct that your reporting senior was later relieved of command "for two felony counts of larceny," the Board found this would not support removing the contested fitness report. They noted, in this regard, that his moral integrity is not in question in your case. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

Although the Board voted not to remove the contested fitness report, they wished to inform you that you may, if you consider it would be in your best interest, submit to future selection boards the colonel's letter of 20 September 1995 on your behalf.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



0752-00

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
3 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 1 Nov 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 1 February 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980128 to 980508 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is in error in two regards. First, he believes the references to his lack of integrity are untrue; that he was completely honest and accurate in answering the questions posed to him concerning his whereabouts on the morning of 24 March 1998. Second, the petitioner believes the derogatory reference to an event that occurred nearly nine years earlier is both inaccurate and unjust. To support his appeal, the petitioner furnishes his own detailed statement, advocacy statements, a "Booking Information" page from the Onslow County Jail, and other items which the petitioner believes will substantiate his case.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Since the Command's policy was to have all persons not in the field spend the night at the Headquarters building, the petitioner's appointed place of duty in the early morning hours of 24 March 1998 was in the Regimental CP. In May 1998, when the petitioner's wife contacted the command to inform them that her husband had been detained on 24 March 1998, the command confronted the petitioner concerning his whereabouts that morning (24 March 1998). Rather than being completely honest and forthright about the situation, the petitioner merely mentioned that he had been to see his pastor, without once mentioning that

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he had been booked and detained by civilian authorities at 0403 on 24 March 1998.

b. As a result of the petitioner's Request Mast, Colonel [REDACTED] conducted an investigation into the matter. The inaccuracies in Colonel [REDACTED] statement at enclosure (17) to reference (a) require comment.

(1) Colonel [REDACTED] implies that if the petitioner was actually in an unauthorized absence (UA) status, he should have been prosecuted under the UCMJ; that since he was not, the incident regarding his whereabouts should not have been part of the challenged fitness report. It is clear, however, that when the reporting officials accepted the letter from the petitioner's pastor, they determined he was not UA. The issue in the fitness report at issue is not a matter of being UA, but rather a lack of integrity in not being forthright and obfuscating the pertinent facts surrounding the petitioner's whereabouts when asked to account for himself.

(2) In his letter at enclosure (17) to reference (a), Colonel [REDACTED] acknowledges that the petitioner was unmotivated and performing at a level less than expected of a Marine SNCO. It is admirable that the petitioner learned from his mistakes and is now performing at an improved level. Nevertheless, while Colonel [REDACTED] indicates he spoke with the Reporting Senior and Reviewing Officer of record, there is no indication that either of those officers recanted their evaluations.

(3) The bottom line is, and quoted from enclosure (17) to reference (a): "...he (the petitioner) is ultimately responsible for his actions during the period." The PERB agrees!

c. The Board concludes that reference to the petitioner's voluntary referral to Alcohol Rehabilitation some nine years ago is not only inappropriate, but does not constitute a second reportable alcohol-related incident. They do not, however, find that such an inclusion should invalidate an otherwise administratively correct and procedurally acceptable fitness report. To this end, the Board is directing elimination of the following verbiage from the challenged fitness report:

(1) From Section C of the fitness report: "Although not documented elsewhere, SNM states that he is a Level III graduate.

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Based on recent events and self-admitted lapses, he is being sent back for re-evaluation and treatment."

(2) From the petitioner's rebuttal: "6. Concerning my use of alcohol I was self referred to improve my quality of life."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps